

Claimant suffered a work-related laceration to his left forearm on November 14, 2001. The compensability of that accidental injury is undisputed except as to the resulting percentage of permanent functional impairment. The primary dispute centers around the question of whether the blood clot that developed in claimant's leg approximately three weeks after his accident was causally connected to the work-related injury. The ALJ determined that claimant's subsequent development of Deep Venous Thrombosis (DVT) was not caused by the forearm injury nor the subsequent treatment claimant received for that injury. Accordingly, the ALJ determined that claimant's impairment was limited to the left upper extremity. Claimant was awarded permanent partial disability compensation based upon a 25 percent scheduled injury to the left forearm. On appeal, claimant lists the issues as:

1. Whether claimant's left leg Deep Venous Thrombosis (blood clot) was casually related to his laceration of his left upper forearm.
2. Whether claimant is entitled to future medical for his left leg Deep Venous Thrombosis (DVT) including prescriptions for Coumadin.
3. Whether claimant has sustained a scheduled injury or whole body disability as a result of his Deep Venous Thrombosis (DVT) and left forearm injury.
4. What printing of the 4th Edition of the AMA Guides to the Evaluation of Permanent Impairment is required to be used to determine claimant's functional impairment.¹
5. Whether claimant is entitled to an award of work disability.
6. Any other findings in the ALJ Moore's award contrary to the interest of Claimant.²

Respondent argues that claimant's functional impairment is less than the 25 percent awarded by the ALJ, but that the ALJ's Award should otherwise be affirmed. In determining claimant's percentage of functional impairment, the ALJ averaged the opinions of all three physicians that testified to that issue. Dr. Tariq B.M. Niazi was of the opinion that claimant's impairment was 34 percent to the left upper extremity, Dr. Mark Melhorn placed claimant's impairment at 17 percent and Dr. Pedro Murati rated claimant's left upper extremity impairment at 24 percent. All three physicians utilized the *AMA Guides*³ in arriving at their rating opinions. Likewise all three physicians acknowledged that the situs of claimant's impairment was below the elbow. As stated, the ALJ averaged 34 percent, 24 percent and 17 percent to arrive at the 25 percent awarded. Respondent argues that the 34 percent rating by Dr. Niazi is out of line with the other opinions. Therefore, only the 24 percent by Dr. Murati and the 17 percent rating by Dr. Melhorn should be utilized. The average of those two ratings is 20.5 percent which is what respondent believes should be awarded. Respondent otherwise agrees with the findings and conclusions of the ALJ.

Should the Board determine that claimant's DVT condition was caused or aggravated either by his work-related injury or the subsequent medical treatment he received for that injury, respondent contends that claimant should be compensated based upon two scheduled injuries rather than a whole body disability. Furthermore, should the Board determine that claimant suffered a general body disability, respondent argues claimant failed to make a good faith effort to find appropriate employment post-injury and, accordingly, a wage should be imputed to him based upon his capacity to earn wages.

¹ In Table 14 "Impairment of the Lower Extremity Due to Peripheral Vascular Disease" which is within section 6.8 "Vascular Diseases Affecting the Extremities" of the first and second printings of the Fourth Edition of the *AMA Guides* to the Evaluation of Permanent Impairment, the impairment ratings are to the whole person (body as a whole), whereas, beginning with the third printing in August 1995 those impairments are of the lower extremity. The same change was made to Table 13 for impairments of the upper extremities, as between the second and third printings of the Fourth Edition.

² Application for Review by Kansas Workers' Compensation Appeal Board at 1-2 (filed 12-01-04).

³ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*, (4th ed.). All references are to the 4th ed. of the *Guides* unless otherwise noted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After considering the entire evidentiary record filed herein together with the briefs and arguments of counsel, the Board finds that the ALJ's Award should be affirmed. The ALJ's Award sets out the relevant facts and applicable law in some detail. It is not necessary to repeat those herein. The Board agrees with the analysis of the evidence and law as set forth in the Award and adopts the ALJ's findings, conclusions and orders as its own.

The record contains expert medical opinion testimony from four physicians concerning the casual connection between claimant's laceration injury of November 14, 2001 and his subsequent development of a DVT condition. Initially, their opinions were equally divided with Drs. Melhorn and Niazi, both orthopedic surgeons, believing that there was no casual connection whereas Dr. Geri Hart, a family practice physician, and Dr. Murati, a physiatrist, attributed claimant's DVT to his immobility during his hospitalization for treatment of the laceration. Dr. Murati's opinion was given less weight by the ALJ because he apparently had an incomplete history and was unsure about the length of claimant's hospitalization as well as the extent to which claimant may have been immobilized during that hospital stay. Moreover, although Dr. Hart's initial opinion likewise attributed the DVT to claimant's immobility, subsequent events caused her to change her opinion.

Claimant began to complain of swelling and pain in his left leg on December 3, 2001. A Doppler examination revealed that claimant "had a deep vein thrombosis of the popliteal and left superficial femoral vein."⁴ Claimant was admitted to the hospital and placed on an anticoagulant. Claimant thereafter was continued on an oral anticoagulant medication, Coumadin, which he will likely need for the rest of his life. The medication was expected to prevent new clots from forming. A repeat Doppler test was performed on July 12, 2002 and showed not only that the old blood clot (DVT), was still present, but, in addition, it appeared a new blot clot had formed. This development caused Dr. Hart to re-examine her earlier opinion.

A. I can say that the original clot I thought was related to the accident. The repeat Doppler showed it to be, continued to be there and the proper treatment, in my opinion, is to continue the Coumadin.

Q. And maybe you have answered my question, but so the need for Coumadin treatment now, as we sit here today, can you say that that is a direct result of his hospitalization and immobilization in November of 2001?

A. It would be impossible for me to predict whether, in my opinion, the original clot was related and it's impossible for me to say whether he would have developed another clot or not.

. . .

⁴ Hart Depo. at 7.

Q. You really, based on what you have, can't state one way or the other whether his life long need or at least his continued need for Coumadin therapy at this point is directly related to a hospitalization and immobilization in November of 2001 or whether it's related to a pre-existing hereditary blood condition. True statement?

A. True.⁵

Based upon the record taken as a whole, the Board agrees with the conclusion reached by the ALJ that more probably than not claimant's DVT was caused by factors other than his work-related injury, or the treatment he received for that injury. The Board also agrees with the ALJ's determination of the nature and extent of claimant's injury and affirms the Award.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the November 23, 2004 Award entered by Administrative Law Judge Bruce E. Moore should be and is hereby affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James S. Oswalt, Attorney for Claimant
D. Shane Bangerter, Attorney for Self-Insured Respondent
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁵ Hart Depo. at 23-25.